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No. 81-2337

In the Supreme Court of the United States

OCTOBER TERM, 1981

JOHN R. BLOCK, SECRETARY OF AGRICULTURE, ET AL., PETITIONERS

v.

THE STATE OF NORTH DAKOTA, EX REL. BOARD OF UNIVERSITY AND SCHOOL LANDS

JOINT APPENDIX

REX E. LEE
Solicitor General
U.S. Department of Justice
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OWEN L. ANDERSON
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Petition for writ of certiorari filed June 22, 1982
Certiorari granted October 4, 1982

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RELEVANT DOCKET ENTRIES IN THE DISTRICT COURT

DATE	NR.	PROCEEDINGS
Oct. 31	1	COMPLAINT FOR INJUNCTIVE AND MANDATORY RELIEF AND DECLARATORY JUDGMENT, with attached AFFIDAVIT OF OWEN L. ANDERSON and Exhibits A thru P, Filed.
1979		
Feb. 20	6	ANSWER OF THE DEFENDANT, UNITED STATES OF AMERICA, w/attached Certificate of Service By Mail, Filed.
July 10	7	PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, Filed; with attached BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, Filed; AFFIDAVIT OF OWEN L. ANDERSON, Filed; AFFIDAVIT OF FRANK E. VYZRALEK, Filed; AFFIDAVIT OF LARRY REMELE, Filed; AFFIDAVIT OF VERNON FAHY, Filed; APPENDIX 1 through 5, AFFIDAVIT OF JUNE THOMPSON, Filed; AFFIDAVIT OF BILL DIXON, Filed; EXHIBITS "A" through "P", filed (Proposed Order submitted therewith).
Oct. 11	9	(DEFTS' CROSS) MOTION FOR SUMMARY JUDGMENT, Filed; with attached MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT MOTION, Filed; CERTIFICATE OF SERVICE BY MAIL, Filed. (Exhibits "A" through "H" attached thereto).
Oct. 30	13	BRIEF IN OPPOSITION TO DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT, with attached CERTIFICATE OF SERVICE, and Appendices A, B, and C, Filed.
Nov. 20	14	CLERK'S RECORD OF STATUS CONFERENCE—Counsel advise Court that case can be submitted on Affidavit and briefing schedule ordered by the Court. Case to be at issue for Court's determination by 2-5-80. Recess.
	15	ORDER After Pre-Trial, Filed & Entered; NOTICE OF ENTRY with copy to counsel.
Dec. 6	16	(DEFENDANTS') SUPPLEMENTAL BRIEF AND AFFIDAVITS, Filed; with attached CERTIFICATE OF SERVICE BY MAIL, Filed.

DATE	NR.	PROCEEDINGS
1980		
Jan. 17	17	(PLAINTIFF'S) SUPPLEMENTAL BRIEF IN OPPOSITION TO DEFENDANT'S SUPPLEMENTAL BRIEF AND AFFIDAVITS OF DECEMBER 5, 1979, Filed; with attached CERTIFICATE OF SERVICE, Filed.
Feb. 21	18	MEMORANDUM AND ORDER, Filed, denying the motion for summary judgment for the plaintiff, denying the motion for summary judgment by the defendant and dismissing Plaintiff's Complaint within 20 days unless prior thereto, plaintiff shall amend its complaint to recite an adequate jurisdictional basis; with NOTICE OF ENTRY to counsel of record.
Mar. 12	19	AMENDED COMPLAINT; with AFFIDAVIT OF SERVICE BY MAIL.
Apr. 21	20	MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION TO STRIKE, Filed; with MEMORANDUM IN SUPPORT THEREOF, Filed; with CERTIFICATE OF SERVICE BY MAIL, Filed.
Apr. 30	21	PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION TO STRIKE, Filed; with AFFIDAVIT OF SERVICE BY MAIL, Filed.
May 7	22	ORDER, Filed and Entered that Motion to Dismiss or in the Alternative Motion to Strike is Denied.
May 13	23	ANSWERS OF THE DEFENDANT, UNITED STATES OF AMERICA with attached CERTIFICATE OF SERVICE BY MAIL, Filed.
July 15	24	PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, Filed
	25	BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO DEFT.'S MOTION FOR A MORE DEFINITE STATEMENT AND AFFIDAVITS AND EXHIBITS, Filed.
	26	AFFIDAVIT OF OWEN L. ANDERSON, Assistant Attorney General, State Land Dept, Filed.
	27	EXHIBITS A through Q, Filed.
	28	AFFIDAVIT OF SERVICE BY MAIL, Filed.
July 24	29	DEFENDANT'S BRIEF IN REPLY TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, with CERTIFICATE OF SERVICE BY MAIL, Filed.

DATE	NR.	PROCEEDINGS
Aug. 14	30	PLAINTIFF's RESPONSE TO DEFENDANTS' BRIEF IN REPLY TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, with AFFIDAVIT OF SERVICE BY MAIL, Filed.
Oct. 15	31	ORDER, Filed & Entered; denying motion for summary judgment. (case set as first case on 12/15/80). NOTICE OF ENTRY with copy to counsel.
Nov. 20	32	CLERK'S RECORD OF PRE-TRIAL CONFERENCE—Ass't Atty. Gen. John Morrison for Ptf and Ass't U.S.A. Herb Becker for deft. Discussion re nature and timetable of case (estimated 1½ days). Recess.
	33	ORDER, Filed and Entered, that both parties will submit historical evidence, and that briefing to be completed by 12/16/80, existing briefs in file shall be treated as trial briefs. NOTICE OF ENTRY w/copy of Order to counsel.
Dec. 12	34	PLAINTIFF'S TRIAL BRIEF, Filed.
Dec. 15	35	DEFENDANT'S TRIAL BRIEF, Filed.
Dec. 16	36	STIPULATION, Filed, that all objections to foundation be waived and documents and affidavits shown as Ptf's Exhibits 1–22 shall be admitted into evidence.
	37	CLERK'S RECORD OF COURT TRIAL—Ptf. rests after Exhibits 1-22 rec'd, deft presents case and rests. Case concluded. Adjourn.
1981		
Feb. 4	34	MEMORANDUM AND ORDER, Filed & Entered; that the plaintiff is entitled to the relief sought. Counsel for the State of North Dakota will forthwith prepare and submit an appropriate form of judgment in conformity herewith. NOTICE OF ENTRY with copy to counsel.

DATE	NR.	PROCEEDINGS
Feb. 24	39	JUDGMENT, Filed & Entered; "IT IS HEREBY ADJUDGED AND DECREED: 1) The Little Missouri River is declared to be a navigable river for the purpose of determining ownership of the bed thereof. 2) Title to the bed of the Little Missouri River within the State of North Dakota, excluding that portion lying below the west line of Lot 10 of Section 34, Township 148 North, Range 95 West of the Fifth Principal Meridian, Dunn County, is hereby quieted in the State of North Dakota. 3) The United States is directed to cease and desist from further developing or otherwise exercising privileges of ownership upon the bed of the Little Missouri River lying within the State of North Dakota. NOTICE OF ENTRY, with copy to counsel.
Apr. 22	40	(DEFENDANT'S) NOTICE OF APPEAL, Filed, to the United States Court of Appeals for the Eighth Circuit from the final judgment entered on Feb. 24, 1981.
Apr. 30	48	NOTICE OF APPEAL filed that plaintiff appeals to the United States Court of Appeals for the Eighth Circuit from Court's Order dismissing plaintiff's complaint which was dated 2/21/80.

RELEVANT DOCKET ENTRIES IN THE COURT OF APPEALS

DATE	FILINGS—PROCEEDINGS	Filed
1981		
June 22,	FEDERAL defendants are acting as appellants.	(7)
Jul 7	*Brief Appellant*	(10)
Jul 17	THREE copies D.R., Plntf's Exh's 1-24, Def's Exh's A, B, C, F, G, I, J, K, L, ONE red notebook of exhibits, w/1486.	
Aug 10	*Brief Appellee*	(15)
Aug 31	*Brief Amicus Curiae* (Calif.)	(18)
Sep 2	*Reply brief* (brief appellee in 81-1486)	19
Dec. 14	ARGUED & SUBMITTED to Judges Bright, Gibson, Larson. Edward J. Shawaker, Justice Dept. for Govt, Owen L. Anderson for State of No.Dak. Concl. by Edward J. Shawaker. Recorded. w/1486	
1982		
Feb. 12	PUBLISHED OPINION BY JUDGE LARSON.	(20)
Feb. 12	JUDGMENT OF District Court affirmed	(21)
Feb. 22	Counsel for Cecil Andrus, et al for extension of time to file petition for rehearing with suggestion for rehearing en banc	(22)
Feb. 22	ORDER: Appellant/cross-appellee may have to and including March 8, 1982 to serve and file petition for rehearing with suggestions for rehearing en banc	(23)
Mar. 5	Appellants/cross-appellee's petition for rehearing or in the alternative rehearing en banc	(24)
Mar. 15	ORDER: APPELLANTS-cross/appellees' petition for rehearing and suggestions for rehearing en banc denied (w/1486)	(25)
Apr. 21	MANDATE ISSUED (w/1486)	

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

Civil Action No.
A 78-1092

THE STATE OF NORTH DAKOTA EX REL. BOARD OF UNIVERSITY AND SCHOOL LANDS, PLAINTIFF,

v.

CECIL ANDRUS, SECRETARY OF THE INTERIOR; BOB BERGLAND, SECRETARY OF AGRICULTURE; FRANK GREGGS, DIRECTOR OF THE UNITED STATES BUREAU OF LAND MANAGEMENT; AND JOHN R. MCGUIRE, CHIEF OF THE UNITED STATES FOREST SERVICE, DEFENDANTS

COMPLAINT FOR INJUNCTIVE AND MANDATORY RELIEF AND DECLARATORY JUDGMENT

I. JURISDICTION AND DESCRIPTION OF THE PARTIES

1. This is a civil suit seeking injunctive, mandatory and declaratory relief from the actions of defendants in asserting ownership of the bed of the Little Missouri River within the State of North Dakota.

2. Jurisdiction is founded on 28 U.S.C. § 1331 (Federal Question); 28 U.S.C. § 1361 (Mandamus); 28 U.S.C. §§ 2201 and 2202 (Declaratory judgment and further relief) and 5 U.S.C. §§ 701–706 (A.P.A.).

3. Venue is proper under 28 U.S.C. § 1391 and the amount in controversy exceeds $10,000.00.

4. The State of North Dakota is a sovereign state with plenary authority to sue on its own behalf and that of its citizens to protect the environmental, economic and property interests of the State and its citizens, as well as to protect the natural resources of the State as trustee of those resources.

5. The Board of University and School Lands of the State of North Dakota exercises management authority over the grant lands and sovereign lands of the State of

North Dakota pursuant to the Constitution and Laws of the State of North Dakota.

6. Defendant Andrus is the Secretary of the Interior of the United States of America with final authority over the Department's activities and specifically over the Bureau of Land Management that is presently unlawfully asserting ownership over sovereign lands of the State of North Dakota.

7. Defendant Bergland is the Secretary of Agriculture of the United States of America with final authority over the Department's activities and specifically over the United States Forest Service that is presently unlawfully asserting ownership over sovereign lands of the State of North Dakota.

8. Defendant Greggs is the Director of the Bureau of Land Management.

9. Defendant McGuire is the Chief of the United States Forest Service.

II. GENERAL LEGAL AND FACTUAL BACKGROUND

10. The Little Missouri River has its headwaters in the northeastern part of Wyoming. It flows northward traversing the southeast corner of Montana, the northwest corner of South Dakota, and the badlands region of western North Dakota until it empties into the Missouri River in the west central part of North Dakota.

11. The Little Missouri River is historically and presently navigable in fact as will more fully appear in the Affidavit and Exhibits attached hereto and herein incorporated by reference; historians have documented commercial navigation on the Little Missouri River as early as 1804.

12. By an Act of Congress approved February 22, 1889, entitled, "AN ACT to provide for the division of Dakota into two States, and to enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and State Governments, and to be admitted into the Union on an equal footing with the original States, and to make donations of public lands to such States," North Dakota became a state. See, Chapter 180, 25 United States Statutes at Large 676.

13. North Dakota became a state on an equal footing with the original thirteen states and all other states admitted to the Union; upon achieving statehood North Dakota became the sovereign owner of all of the beds of navigable lakes and streams (sovereign lands) located within the state subject only to the authority of the United States under constitutional powers delegated to it by the states to guarantee the right of navigation on such bodies of water for the enhancement of interstate commerce.

14. The United States of America through its Bureau of Land Management has issued leases for the development of minerals on and underlying the bed of the navigable Little Missouri River and has otherwise unlawfully exercised other privileges of ownership of such beds. Such activities constitute an unlawful encroachment and a slander of title upon the sovereign lands of the State of North Dakota.

15. By act of the forty-fifth legislative assembly in 1977 entitled, "AN ACT ... relating to the sovereign lands of the state of North Dakota. ..." the Board of University and School Lands was given complete administrative authority over the sovereign lands of the State of North Dakota. This action is being brought by such Board in fulfillment of that responsibility. See, S.L. 1977, Ch. 144. (Chapt. 15-08.2, N.D.C.C.).

16. By act of the forty-fourth legislative assembly in 1975 entitled, "AN ACT to provide for classification of the Little Missouri River as a state scenic river, and for its protection and preservation as a free-flowing and navigable river," the Little Missouri River was deemed a navigable river; therefore, this action is consistent with legislative directive. See, S.L. 1975, Ch. 576. (Chapt. 61-29, N.D.C.C.).

17. That the Board of University and School Lands of the State of North Dakota and its predecessor in interest, the Bank of North Dakota, has leased the bed of the Little Missouri River for the exploration and production of oil and gas for more than sixteen years based on a search of records on file with the State Historical Society of North Dakota.

III. CLAIM FOR RELIEF

18. Plaintiff repeats and alleges all previous allegations as though fully set forth herein.

19. Defendant has unlawfully asserted ownership of the bed of the navigable Little Missouri River to the detriment of plaintiff.

20. That the Little Missouri River is a navigable river in fact and in law based on historical and present interstate and intrastate commercial navigation.

IV. PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for this Court's order:

1. Directing defendants to cease and desist from development or otherwise exercising privileges of ownership upon the bed of the Little Missouri River within the State of North Dakota.

2. Declaring the Little Missouri River to be a navigable river for the purpose of determining ownership of the bed.

3. Granting appropriate interlocutory relief to plaintiffs as may be necessary to prevent further injury to them pending final judgment herein.

4. Granting such further relief as may be appropriate.

Dated this 31st day of October, 1978.

Respectfully submitted,

ALLEN I. OLSON
Attorney General of North Dakota

BY: _____
OWEN L. ANDERSON, *Special Assistant*
Attorney General of the Board of
University and School Lands
State Capitol Building
Bismarck, North Dakota 58505

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION

Civil No. A78-1092

THE STATE OF NORTH DAKOTA EX REL. BOARD OF UNIVERSITY AND SCHOOL LANDS, PLAINTIFF,

v.

CECIL ANDRUS, SECRETARY OF THE INTERIOR; ET AL., DEFENDANTS.

ANSWER OF THE DEFENDANT, UNITED STATES OF AMERICA

Comes now the United States of America, by and through Assistant United States Attorney Herbert A. Becker, and for its Answer to the Plaintiff's Complaint for Injunctive and Mandatory Relief and Declaratory Judgment states the following:

1.

Defendant admits paragraphs, 1, 2, 3, 4 and 5.

2.

Defendant admits that Cecil Andrus is the Secretary of the Interior and denies the remaining allegations contained in paragraph 6.

3.

Defendant admits that Bob Bergland is the Secretary of Agriculture and denies the remaining allegations contained in paragraph 7.

4.

Defendant admits paragraphs 8, 9 and 10.

5.

Defendant denies paragraph 11.

6.

Defendant admits paragraph 12.

7.

Defendant denies paragraph 13.

8.

Defendant admits that its Bureau of Land Management has issued leases for the development of minerals on or underlying the bed of the navigable Little Missouri River and denies all other allegations contained in paragraph 14.

9.

Defendant is without sufficient facts to confirm or deny paragraph 15.

10.

Defendant admits that part of paragraph 16 which quotes from the North Dakota Century Code and denies the remaining allegations of that paragraph.

11.

Defendant is without sufficient facts to confirm or deny paragraph 17.

12.

Defendant denies paragraphs 18, 19 and 20.

AFFIRMATIVE DEFENSES

The United States further answers by alleging the following affirmative defenses:

1. That this is an action in the nature of a quiet title suit.

2. That the United States has exercised dominion and control over the bed of the river since at least 1955.

3. That 28 U.S.C. 2409(a) bars this action because it was not commenced within twelve years of the date upon which it accrued.

4. That portions of the bed of the river are owned by the Three Affiliated Tribes of the Fort Berthold Indian Reser-

vation, North Dakota, and this Court does not have subject matter or personal jurisdiction over the Tribe.

THEREFORE, Defendant prays for this Court's Order dismissing this action and for costs and such other and further relief as the Court may deem appropriate.

Dated this 16th day of February, 1979.

/s/ _____

HERBERT A. BECKER
Assistant United States Attorney
P. O. Box 2505
Fargo, North Dakota 58108
Attorney for the Defendant,
United States of America.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION

Civil Action No. A78-1092

THE STATE OF NORTH DAKOTA EX REL. BOARD OF UNIVERSITY AND SCHOOL LANDS, PLAINTIFF,

v.

CECIL ANDRUS, SECRETARY OF THE INTERIOR; BOB BERGLAND, SECRETARY OF AGRICULTURE; FRANK GREGG, DIRECTOR OF THE UNITED STATES BUREAU OF LAND MANAGEMENT; AND R. MAX PETERSON, CHIEF OF THE UNITED STATES FOREST SERVICE, DEFENDANTS.

AMENDED COMPLAINT

I. JURISDICTION AND DESCRIPTION OF THE PARTIES

1. This is a civil suit seeking relief from the actions of defendants in asserting ownership of the bed of the Little Missouri River within the State of North Dakota.

2. Jurisdiction is founded on 28 U.S.C. § 2409a (Quiet Title); 28 U.S.C. § 1331 (Federal Question); 28 U.S.C. § 1361 (Mandamus); and 28 U.S.C. §§ 2201 and 2202 (Declaratory Judgment and further relief). The action also arises under 5 U.S.C. §§ 701-706 (A.P.A.).

3. Venue is proper under 28 U.S.C. § 1391.

4. The State of North Dakota is a sovereign state with plenary authority to sue on its own behalf and that of its citizens to protect the environmental, economic and property interests of the State and its citizens, as well as to protect the natural resources of the State as trustee of those resources.

5. The Board of University and School Lands of the State of North Dakota exercises management authority over the grant lands and sovereign lands of the State of North Dakota pursuant to the Constitution and laws of the State of North Dakota.

6. Defendant Andrus is the Secretary of the Interior of the United States of America with final authority over the Department's activities and specifically over the Bureau of Land Management that is presently unlawfully asserting ownership over sovereign lands of the State of North Dakota.

7. Defendant Bergland is the Secretary of Agriculture of the United States of America with final authority over the Department's activities and specifically over the United States Forest Service that is presently unlawfully asserting ownership over sovereign lands of the State of North Dakota.

8. Defendant Gregg is the Director of the Bureau of Land Management.

9. Defendant Peterson is the Chief of the United States Forest Service.

II. GENERAL LEGAL AND FACTUAL BACKGROUND

10. The Little Missouri River has its headwaters in the north-eastern part of Wyoming. It flows northward traversing the southeast corner of Montana, the northwest corner of South Dakota, and the badlands region of western North Dakota until it empties into the Missouri River in the west central part of North Dakota.

11. The Little Missouri River is historically and presently navigable in fact as appears in the Affidavit and Exhibits attached to the complaint and incorporated herein by reference. Historians have documented commercial navigation on the Little Missouri River as early as 1804.

12. By an Act of Congress approved February 22, 1889, entitled, "AN ACT to provide for the division of Dakota into two States, and to enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and State Governments, and to be admitted into the Union on an equal footing with the original States, and to make donations of public lands to such States," North Dakota became a state. See, Chapter 180, 25 United States Statutes at Large 676.

13. North Dakota became a state on an equal footing with the original thirteen states and all other states admitted to the Union; upon achieving statehood North Dakota became the sovereign owner of all of the beds of navigable lakes and streams (sovereign lands) located within the state subject only to the authority of the United States under constitutional powers delegated to it by the states to guarantee the right of navigation on such bodies of water for the enhancement of interstate commerce.

14. The United States of America through its Bureau of Land Management has issued leases for the development of minerals on and underlying the bed of the navigable Little Missouri River and has otherwise unlawfully exercised other privileges of ownership of such beds. Such activities constitute an unlawful encroachment and a clander of title upon the sovereign lands of the State of North Dakota.

15. By act of the Forty-fifth Legislative Assembly in 1977 entitled, "AN ACT ... relating to the sovereign lands of the state of North Dakota ...." the Board of University and School Lands was given complete administrative authority over the sovereign lands of the State of North Dakota. This action is being brought by such Board in fulfillment of that responsibility. See, S.L. 1977, Ch. 144. (Chapter 15-08.2, N.D.C.C.).

16. By act of the Forty-Fourth Legislative Assembly in 1975 entitled, "AN ACT to provide for classification of the Little Missouri River as a state scenic river, and for its protection and preservation as a free-flowing and navigable river," the Little Missouri River was deemed a navigable river; therefore, this action is consistent with legislative directive. See, S.L. 1975, Ch. 576. (Chapter 61-29, N.D.C.C.).

17. That the Board of University and School Lands of the State of North Dakota and its predecessor in interest, the Bank of North Dakota, has leased the bed of the Little Missouri River for the exploration and production of oil and gas for more than sixteen years based on a search of records on file with the State Historical Society of North Dakota.

III. CLAIM FOR RELIEF

18. Defendant has unlawfully asserted ownership of the bed of the navigable Little Missouri River to the detriment of plaintiff.

19. That the Little Missouri River is a navigable river in fact and in law based on historical and present interstate and intrastate commercial navigation.

IV. PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for this Court's order:

1. Directing defendants to cease and desist from development or otherwise exercising privileges of ownership upon the bed of the Little Missouri River within the State of North Dakota.

2. Declaring the Little Missouri River to be a navigable river for the purpose of determining ownership of the bed.

3. Granting appropriate interlocutory relief to plaintiffs as may be necessary to prevent further injury to them pending final judgment herein.

4. Granting such further relief as may be appropriate.

DATED this 11th day of March, 1980.

Respectfully submitted,

ALLEN I. OLSON
Attorney General of North Dakota

By: _____

MURRAY G. SAGSVEEN
Solicitor
Office of the Attorney General
First Floor, State Capitol
Bismarck, North Dakota 58505
(701) 224-2210

_____

OWEN L. ANDERSON
Assistant Attorney General
Board of University and School Lands
State Capitol Building
Bismarck, North Dakota 58505

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION

Civil No. A78-1092

THE STATE OF NORTH DAKOTA EX REL. BOARD OF UNIVERSITY AND SCHOOL LANDS, PLAINTIFF,

v.

CECIL ANDRUS, SECRETARY OF THE INTERIOR, ET AL., DEFENDANTS.

ANSWER OF THE DEFENDANT, UNITED STATES OF AMERICA

Comes now the United States of America, by and through Assistant United States Attorney Herbert A. Becker, and for its Answer to the Plaintiff's Amended Complaint states the following:

1.

Defendant admits paragraphs 1, 2, 3, 4 and 5.

2.

Defendant admits that Cecil Andrus is the Secretary of the Interior and denies the remaining allegations contained in paragraph 6.

3.

Defendant admits that Bob Bergland is the Secretary of Agriculture and denies the remaining allegations contained in paragraph 7.

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Defendant admits paragraphs 8, 9 and 10.

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Defendant denies paragraph 11.

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Defendant admits paragraph 12.

7.

Defendant denies paragraph 13.

8.

Defendant admits that its Bureau of Land Management has issued leases for the development of minerals on or underlying the bed of the navigable Little Missouri River and denies all other allegations contained paragraph 14.

9.

Defendant is without sufficient facts to confirm or deny paragraph 15.

10.

Defendant admits that part of paragraph 16 which quotes from the North Dakota Century Code and denies the remaining allegations of that paragraph.

11

Defendant is without sufficient facts to confirm or deny paragraph 17.

12.

Defendant denies paragraphs 18 and 19.

AFFIRMATIVE DEFENSES

The United States further answers pursuant to Rule 12(e) of the Federal Rules of Civil Procedure and makes a motion for more definite statement. That rule permits a motion for more definite statement where the Complaint is vague; 28 U.S.C. 2409a(c) requires that the Complaint set forth with particularity the nature of the interest claimed. Accordingly, the United States requests the Plaintiff to file a metes and bounds description concerning the interest claimed by it.

THEREFORE, the Defendant prays for the following relief:

(1) Dismissal of the action;

(2) Costs and such other and further relief as the Court may deem appropriate; and

(3) An order quieting title to the area in dispute.

Dated this 12th day of May, 1980

/s/ _____

HERBERT A. BECKER
Assistant United States Attorney
P. O. Box 1505
Fargo, North Dakota 581[illegible]
Attorney for the Defendant,
United States of America.

Supreme Court of the United States

No. 81-2337

JOHN R. BLOCK, SECRETARY OF AGRICULTURE, ET AL., PETITIONERS,

v.

NORTH DAKOTA, EX REL. BOARD OF UNIVERSITY AND SCHOOL LANDS

ORDER ALLOWING CERTIORARI. Filed October 4, 1982.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Eighth Circuit is granted.